

REGULAR MEETING  
February 20, 2020

The Regular meeting of the Board of Trustees of the Village of Upper Nyack was held at the village hall on Thursday, February 20, 2020 at 8:00 PM.

**Those present:** Mayor Tarapata, Trustees Diamond, Dodge & Rothchild  
Village Clerk Carol G. Brotherhood, Treasurer Richard D. Fortunato, Village Attorney Robert P. Lewis

**Absent:** Trustee Esmay

**Others identified:** PO Kennedy, CPD, Jeffrey Epstein, Hilarie Blumenthal, Jerry Marton, Michele Whalen

POLICE REPORTS – PO Kennedy appeared before the Board to present the report.

Reported and discussed: 125 calls for service in Village including school/cultural/religious organization checks and medical. There were 19 alarms (medical & burglary) 21 medical emergencies; 2 motor vehicle accidents without injury. There have been several incidents in Rockland & Westchester of counterfeit \$20 bills; SCAMS: many related to the corona-virus, increase of IRS and Social Security during tax season; Voice cloning – caller sounds like someone you know  
Reminder to not give any personal information out over the phone.

Hilarie Blumenthal, 300 Ellen Street, asked to speak to the Board regarding ongoing activities at the shipyard at 1 Van Houten St.. Ms. Blumenthal noted that the shipyard has an open building permit. The owner had appeared before the Zoning Board of Appeals and was allowed to continue work and outdoor storage due to the open building permit and building activity. The building is completed but it appears that nothing is being stored in there. There are 2 boats wrapped in shrink wrap and storing of other items that are occupying an area where parking should be. This limits emergency access next to the building.

Ms. Blumenthal has a continuing concern about paint and vapors going into the air from boats being stripped of paint with no barriers in place. The Village Clerk had called George Sweikert at the DEC who indicated he would send a DEC officer to the site. It is unclear if anyone actually went to the site. Ms. Blumenthal also sent an email to Mr. Sweikert.

Ms. Blumenthal requested that the Building Inspector document how crowded the property is and the continuing noise.

Tarps are being used in place of the wash pad and now there are about 14 boats being cleaned on tarps.

TREASURER'S REPORT – Submitted for review

The CLASS investment has produced \$3,048.00 in January in interest for the Village.

Treasurer Fortunato requested the Board to create a list of items that should be included in the 2020-2021 budget.

Budget workshop is scheduled for April 2, 2020 (Workshop April 9<sup>th</sup> will be cancelled) Tentative Budget public hearing will be April 16, 2020.

VOUCHERS – Read and approved for payment.

MINUTES – Trustee Dodge motioned to approve the minutes of the **1/16/2020 Regular meeting**, seconded by Trustee Rothchild and so approved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

Trustee Rothchild motioned to approve the minutes of the **2/06/2020 Special meeting**, seconded by Trustee Diamond and so approved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

Draft Comprehensive Plan for Village of Upper Nyack

- a) Review Full EAF – Mayor Tarapata read the EAF and the Board reviewed the document.

Trustee Rothchild made a motion that the Board accept the EAF as submitted by the Village Engineer, with a finding that there will be no negative environmental impact to the Village of Upper Nyack, seconded by Trustee Dodge and it was so moved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

- b) SEQRA – Type I Action – Lead Agency - Village of Upper Nyack

Trustee Rothchild made a motion to classify this as a Type I Action and declare the Board of Trustees of the Village of Upper Nyack, as lead agency, seconded by Trustee Dodge and so moved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

Village Attorney Lewis commented to the Board that having read the full plan, he was very impressed by the work that was done and that it was very complete and comprehensive. Village Attorney also noted that he thoroughly enjoyed the history section and thought the committee did a tremendous job.

c) Set public hearing date for Public Comment and Citizen Participation  
Trustee Dodge made a motion that the Board set a public hearing on March 26, 2020 at 7:00 pm at the Upper Nyack Elementary School for Public Comment and Citizen Participation for the Update of the Comprehensive Plan, seconded by Trustee Diamond and it was so moved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

**8:30 PM Public Hearing: Temporary Moratorium Law for the 9W corridor in the OB, LO and R-4 Zones, adding to the 1962 Zoning Ordinance**

The Clerk read the public hearing notice.

Trustee Rothchild made a motion to open the public hearing, seconded by Trustee Dodge and it was so moved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

Discussion: Mayor Tarapata noted the moratorium will be in place while the review of the comprehensive plan takes place and until it is adopted.

The Mayor opened the discussion to the public.

Michelle Whalen, Birchwood Ave., questioned what the law was or was it new? Will there be a 6 month moratorium on all of the village or in any other districts? Mayor Tarapata noted it would only be in the commercial zones.

The Village Clerk noted that the Rockland County Planning Board and the Town of Clarkstown Planning Board had submitted responses under the GML review.

The responses were "No impact" "For local determination only"

With no further discussion from the Board or the public,

Trustee Rothchild made a motion to close the public hearing, seconded by Trustee Dodge and it was so moved.

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

Motion to adopt: Trustee Diamond

Seconded by: Trustee Rothchild

Vote: AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

**8:45 PM Public Hearing:** Wireless Telecommunications Facilities, amending the 1962 Zoning Ordinance by adding Section 6:9 to Article III

The Clerk read the public hearing notice.

Trustee Dodge made a motion to open the public hearing, seconded by Trustee Rothchild and it was so moved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

Discussion: Jeffrey Epstein, 115 Locust Drive, noted to the board that he was impressed that the Board got ahead of this limit as to what the municipality can control in the right of way

Mayor Tarapata noted she had obtained a model law from NYCOM. This law gives the Village some control over placement and what devices look like. Upper Nyack is ahead of other municipalities in Rockland County.

Trustee Rothchild made a motion to close the public hearing, seconded by Trustee Dodge and it was so moved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

Discussion by the Board:

The Mayor read the summary description of the EAF.

Trustee Dodge made a motion that the Board of Trustees reviewed the EAF and adopted it with minor changes as amended, and declares the finding is negative and there are no environmental impacts except as outlined in the EAF document, seconded by Trustee Diamond and so moved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

The Clerk read the recommendations submitted by the Rockland County Planning Board and the Town of Clarkstown Planning Board. The Board read and reviewed the recommendations from the Rockland County Planning Board and Trustee Rothchild made a motion that the Board adopt amendments #1 and #2 and determine to override #3 for the following reason: The requirement is already in the law.

"The definition of "Wireless Telecommunication Facilities" set forth in section 6:9.2(29) includes Antenna Facilities and Structures that are used in the provision of Personal Wireless Service. The terms Antenna Facility and Structures include accessory equipment used in the provision of Personal Wireless Service, such that it is the Village Board's view that no additional regulation of accessory equipment is required."

On a call for a vote to override the recommendations:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

Trustee Diamond made a motion that the Board adopt the amended proposed law, amending Local law 14 of 2004 of the Zoning Ordinance of the Village of Upper Nyack, last amended by Local Law 2 of 2017 to delete certain definitions and to add a new Section §6:9 to Article III, such section to be titled "Wireless Telecommunication Facilities", seconded by Trustee Rothchild and so approved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

The Village Clerk will send a letter to the Rockland County Planning Board and the Town of Clarkstown Planning Board informing them that the Board chose to override one of the recommendations and it was done with a super majority vote of the Board of Trustees.

#### APPOINTMENT:

After a brief discussion, Mayor Tarapata noted that Noelle C. Wolfson, Esq. will be appointed as the Attorney for the land use boards for the Village of Upper Nyack

Trustee Diamond made a motion to ratify the appointment, seconded by Trustee Rothchild and it was so moved.

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None

ABSENT: Trustee Esmay

Robert P. Lewis, Esq. will continue as Village Attorney for all matters pertaining to the Village Board.

Set Public Hearing date to extend Moratorium Law for special use permits and special use renewal applications

Mayor Tarapata noted this proposed law will give the Village ability to set conditions for all special permits.

Trustee Rothchild noted to the public present that this is a proposal and the actual public hearing is being set for a future date.

Trustee Dodge made a motion to set a public hearing for March 19, 2020 at 7:30 pm, to consider a “temporary moratorium on commercial or residential special use permit and special use permit renewal applications”, seconded by Trustee Rothchild and so moved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None ABSENT: Trustee Esmay

#### Consulting Arborist

After a brief discussion, Trustee Dodge made a motion that the Board accept the proposal from Rockland Tree d/b/a Wickes Arborist for consulting arborist services for three (3) years and to allow the Mayor to sign the agreement, seconded by Trustee Diamond and so moved.

On a call for a vote:

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None ABSENT: Trustee Esmay

Trustee Rothchild made a motion to adjourn, seconded by Trustee Dodge and it was so moved.

AYES: Mayor Tarapata, Trustees Diamond, Dodge & Rothchild

NOES: None ABSENT: Trustee Esmay

The meeting was adjourned at 9:50 PM.

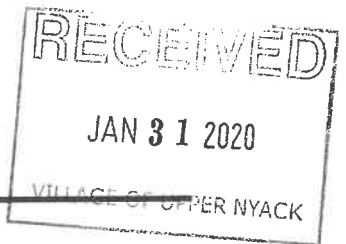
Respectfully submitted,

Carol G. Brotherhood, Village Clerk



# Rockland County

Ed Day, Rockland County Executive



## DEPARTMENT OF PLANNING

Dr. Robert L. Yeager Health Center  
50 Sanatorium Road, Building T  
Pomona, New York 10970

Phone: (845) 364-3434 Fax: (845) 364-3435

**Douglas J. Schuetz**  
*Acting Commissioner*

**Arlene R. Miller**  
*Deputy Commissioner*

January 27, 2020

Upper Nyack Village Board  
328 North Broadway  
Upper Nyack, NY 10960

### Tax Data:

**Re: GENERAL MUNICIPAL LAW REVIEW:** Section 239 L and M

**Map Date:**

**Date Review Received:** 1/15/2020

**Item: VILLAGE OF UPPER NYACK - TEMPORARY MORATORIUM ON APPLICATIONS (UN-98)**

Temporary moratorium on all land use applications that abut the Route 9W corridor in the OB, LO, and R-4 zoning districts pending review, completion, and amendment or adoption of a comprehensive plan with attendant zoning code laws and regulations. The moratorium is to last six months or until 30 days after a comprehensive revised master plan for these areas is enacted and take effect, whichever occurs first.  
Route 9W corridor in the OB, LO, and R-4 zoning districts

### Reason for Referral:

US Route 9W, Town of Clarkstown, Village of Nyack, Long Path Hiking Trail

The County of Rockland Department of Planning has reviewed the above item. Acting under the terms of the above GML powers and those vested by the County of Rockland Charter, I, the Commissioner of Planning, hereby:

**\*Approve**

1 Since the proposed temporary moratorium law will have no adverse impacts on any County-wide interests, this matter is remanded for local determination.

  
\_\_\_\_\_  
Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Mayor Karen Tarapata, Upper Nyack  
New York State Department of Transportation  
New York - New Jersey Trail Conference  
  
Town of Clarkstown  
Village of Nyack

## **VILLAGE OF UPPER NYACK - TEMPORARY MORATORIUM ON APPLICATIONS (UN-98)**

*\*The proposed action is deemed to have no significant negative impact on nearby municipalities, County or State roads or facilities, County Parks or Drainage Systems or the surrounding Neighborhood Character and, therefore, the ACTION IS FOR LOCAL DETERMINATION. Approval does not necessarily mean we endorse this subject action as desirable from the viewpoint of your municipality.*

*The review undertaken by the Rockland County Planning Department is pursuant to, and follows the mandates of Article 12-B of the New York General Municipal Law. Under Article 12-B the County of Rockland does not render opinions, nor does it make determinations, whether the item reviewed implicates the Religious Land Use and Institutionalized Persons Act. The Rockland County Planning Department defers to the municipality forwarding the item reviewed to render such opinions and make such determinations if appropriate under the circumstances.*

*In this respect, municipalities are advised that under the Religious Land Use and Institutionalized Persons Act, the preemptive force of any provision of the Act may be avoided (1) by changing a policy or practice that may result in a substantial burden on religious exercise, (2) by retaining a policy or practice and exempting the substantially burdened religious exercise, (3) by providing exemptions from a policy or practice for applications that substantially burden religious exercise, or (4) by any other means that eliminates the substantial burden.*

*Proponents of projects are advised to apply for variances, special permits or exceptions, hardship approval or other relief.*

*Pursuant to New York State General Municipal Law §239-m(6), the referring body shall file a report of final action it has taken with the Rockland County Department of Planning within thirty (30) days after final action. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.*



TOWN OF CLARKSTOWN  
DEPARTMENT OF PLANNING

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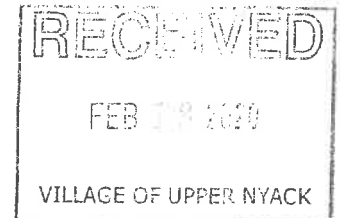


TOWN OF CLARKSTOWN  
PLANNING BOARD

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RUDOLPH J. YACYSHYN, VICE CHAIRMAN  
PETER E. STREITMAN, MEMBER  
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PHILLIP J. DEGAETANO, MEMBER  
DOUGLAS B. KATZ, MEMBER  
EDWARD BERTOLINO, MEMBER

February 13, 2020

Ms. Carol G. Brotherhood  
Village of Upper Nyack  
328 North Broadway  
Nyack, NY 10960



**Re: Village of Upper Nyack Referral: Proposed Moratorium on Applications**

Dear Ms. Brotherhood:

The Town of Clarkstown Planning Board reviewed the above referral at their regular meeting on February 12, 2020 for a Proposed Moratorium on Applications.

After a brief discussion, on a Motion of Guardaro, Seconded by DeGaetano, and carried 7:0, with Ayes of Heim, Yacyshyn, Streitman, Katz, and Bertolino, **the Planning Board of the Town of Clarkstown deemed the matter for local determination.**

Thank you for the opportunity to review this referral.

Sincerely,

Gilbert Heim  
Chair

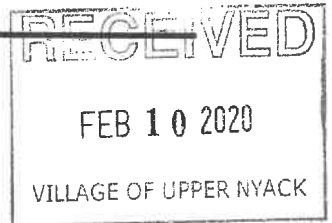
CC: Planning Board  
RC Planning



# Rockland County

Ed Day, Rockland County Executive

**DEPARTMENT OF PLANNING**  
Dr. Robert L. Yeager Health Center  
50 Sanatorium Road, Building T  
Pomona, New York 10970  
Phone: (845) 364-3434 Fax: (845) 364-3435



**Douglas J. Schuetz**  
Acting Commissioner

**Arlene R. Miller**  
Deputy Commissioner

February 5, 2020

Upper Nyack Village Board  
328 North Broadway  
Upper Nyack, NY 10960

**Tax Data:**

**Re: GENERAL MUNICIPAL LAW REVIEW:** Section 239 L and M

**Map Date:**

**Date Review Received:** 1/16/2020

**Item: VILLAGE OF UPPER NYACK - WIRELESS TELECOMMUNICATION FACILITIES (UN-99)**

Local Law to remove certain definitions from Article II of the Village Zoning Ordinances and to add a new Section 6:9 to Article III titled Wireless Telecommunication Facilities. The proposed Law is intended to conform the Village's regulations with federal law and Federal Communications Commission regulations. Throughout the Village

**Reason for Referral:**

State and County roads and parks, County streams and facilities, adjacent municipalities

The County of Rockland Department of Planning has reviewed the above item. Acting under the terms of the above GML powers and those vested by the County of Rockland Charter, I, the Commissioner of Planning, hereby:

***\*Recommend the following modifications***

- 1 Article IV, Sections 10 through 15 of the Zoning Ordinance must be updated to state that Wireless Telecommunication Facilities are a permitted use in the R-1, R-2, R-3, R-4, R-5, MB, VC, OB, and LO zoning districts.
- 2 Section 6:9.7(2)f. provides bulk requirements for height and setback, but not for other standards such as lot area or buffers. These standards should be included to better regulate the locations on which a Wireless Telecommunication Facility may be sited. In addition, the Village should consider creating different bulk requirements for each zone. A more dense residential district such as the R-5 district should have different bulk standards than a commercial district like the LO district. In the R-5 district, single-family homes are permitted on lots with less than 7,500 SF, whereas in the LO district, much larger office and laboratories are permitted with a minimum lot area of 50,000 SF. While a larger Facility may fit in with the landscape in the LO district, it may not be appropriate for a district such as the R-5 district.
- 3 The Wireless Telecommunication Facilities have accessory structures associated with them. Criteria shall also be designed for these structures such as buffer areas and setback requirements.

## **VILLAGE OF UPPER NYACK - WIRELESS TELECOMMUNICATION FACILITIES (UN-99)**

4 The following additional comment is offered strictly as an observation and is not part of our General Municipal Law (GML) review. The board may have already addressed this point or may disregard it without any formal vote under the GML process.

4.1 The Town of Clarkstown has developed a thorough Wireless Telecommunications Facility section of their Town Code. The Village may wish to reference Section 251 of the Clarkstown Code when developing this Local Law in order to understand the scope, height restrictions, and other requirements they have imposed on these Facilities.

4.2 In Section 6:9.2, the word for definitions 1-9 are written immediately after the number. However, there is a tab between the word and number for all subsequent definitions. There should be either a tab or no tab for all of them to keep the definitions section consistently formatted.

  
\_\_\_\_\_  
Douglas J. Schuetz  
Acting Commissioner of Planning

cc: Mayor Karen Tarapata, Upper Nyack

Town of Clarkstown  
Village of Nyack

*\*NYS General Municipal Law Section 239 requires a vote of a 'majority plus one' of your agency to act contrary to the above findings.*

*The review undertaken by the Rockland County Planning Department is pursuant to, and follows the mandates of Article 12-B of the New York General Municipal Law. Under Article 12-B the County of Rockland does not render opinions, nor does it make determinations, whether the item reviewed implicates the Religious Land Use and Institutionalized Persons Act. The Rockland County Planning Department defers to the municipality forwarding the item reviewed to render such opinions and make such determinations if appropriate under the circumstances.*

*In this respect, municipalities are advised that under the Religious Land Use and Institutionalized Persons Act, the preemptive force of any provision of the Act may be avoided (1) by changing a policy or practice that may result in a substantial burden on religious exercise, (2) by retaining a policy or practice and exempting the substantially burdened religious exercise, (3) by providing exemptions from a policy or practice for applications that substantially burden religious exercise, or (4) by any other means that eliminates the substantial burden.*

*Proponents of projects are advised to apply for variances, special permits or exceptions, hardship approval or other relief.*

*Pursuant to New York State General Municipal Law §239-m(6), the referring body shall file a report of final action it has taken with the Rockland County Department of Planning within thirty (30) days after final action. A referring body which acts contrary to a recommendation of modification or disapproval of a proposed action shall set forth the reasons for the contrary action in such report.*

TOWN OF CLARKSTOWN  
DEPARTMENT OF PLANNING

JOSE C. SIMOES, PRINCIPAL PLANNER  
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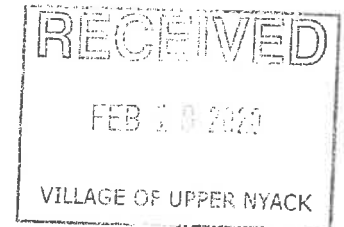


TOWN OF CLARKSTOWN  
PLANNING BOARD

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EDWARD BERTOLINO, MEMBER

February 13, 2020

Ms. Carol G. Brotherhood  
Village of Upper Nyack  
328 North Broadway  
Nyack, NY 10960



**Re: Village of Upper Nyack Referral: Proposed Local Law Amending the Zoning Ordinance to include a section on Wireless Telecommunication Facilities**

Dear Ms. Brotherhood:

The Town of Clarkstown Planning Board reviewed the above referral at their regular meeting on February 12, 2020 for a Proposed Local Law Amending the Zoning Ordinance to include a section on Wireless Telecommunication Facilities.

After a brief discussion, on a Motion of Katz, Seconded by DeGaetano, and carried 7:0, with Ayes of Heim, Yacyshyn, Streitman, Guardaro, and Bertolino the Clarkstown Planning Board **concurs with Rockland County Planning Department comments dated February 5, 2020 and recommended the inclusion of an established height limit on wireless telecommunication facility towers.**

Thank you for the opportunity to review this referral.

Sincerely,

Gilbert Heim  
Chair

CC: Planning Board  
RC Planning

**MAYOR**  
Karen A. Tarapata

**DEPUTY MAYOR**  
Michael Esmay

**TRUSTEES**  
Joseph P. Diamond  
Laurie Dodge  
Kennon Rothchild III

## **VILLAGE OF UPPER NYACK**

**328 NORTH BROADWAY**  
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**VILLAGE CLERK**  
Carol G. Brotherhood

**DEPUTY VILLAGE CLERK**  
Donna Albert

**TREASURER**  
Richard D. Fortunato

**VILLAGE ATTORNEY**  
Robert P. Lewis

Douglas J. Schuetz  
Acting Commissioner  
Rockland County Department of Planning  
Dr. Robert L. Yeager Health Center  
50 Sanatorium Road, Building T  
Pomona, New York 10970

*Re: Village of Upper Nyack – Wireless Telecommunication Facilities (UN-99)  
Report of Action Pursuant to General Municipal Law §239-m(6)*

Dear Mr. Schuetz:

On Thursday, February 20, 2020 the Village of Upper Nyack Board of Trustees (the "Village Board") adopted Local Law 2 of 2020 relating to the regulation of wireless telecommunication facilities in the Village (the "Wireless Telecommunications Law"). By letter dated February 5, 2020 the Rockland County Planning Department recommended three modifications to the originally proposed Wireless Telecommunications Law.

The Village incorporated the first two recommendations into the law as adopted but adopted an override of recommendation three by supermajority vote.

Recommendation three provided as follows: "The Wireless Telecommunication Facilities have accessory structures associated with them. Criteria shall also be designed for these structures such as buffer areas and setback requirements."

The Village Board adopted an override of this comment because the Wireless Telecommunication Law defines "Wireless Telecommunication Facilities" to include Antenna Facilities and Structures that are used in the provision of Personal Wireless Service. The terms Antenna Facility and Structures are defined to include accessory equipment used in the provision of Personal Wireless Service, such that it was the Village Board's view that no additional regulation of accessory equipment is required.

Enclosed for your records is a copy of the Village Board's resolution adopting the Wireless Telecommunication Law [or excerpts from the Village Board's minutes], along with the final text of the adopted law.

If you have any questions or need any additional information, please feel free to contact me Monday-Friday, 9 am until 12 noon, (845) 358-0084 or email at [mayor.tarapata@uppernyack-ny.us](mailto:mayor.tarapata@uppernyack-ny.us)



Karen A. Tarapata  
Mayor

CC: Town of Clarkstown, Planning Board